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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,512	08/07/2003	Joseph R. Pearce	02878.000200	8447

5514 7590 10/20/2004

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NEW YORK, NY 10112

EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,512

Applicant(s)

PEARCE, JOSEPH R.

Examiner

Jon A Szumny

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final..
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-16, 18, 19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13, 18, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3632

This is the second office action for application number 10/635,512, Wrist Rest, filed on August 7, 2003.

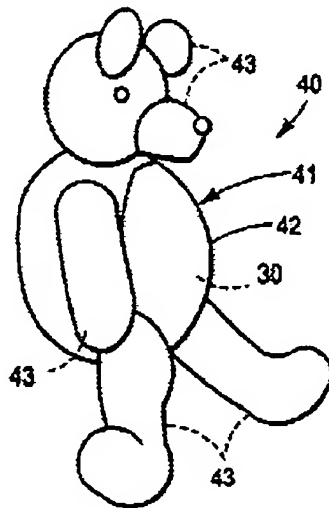
Election/Restrictions

Claims 5 and 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 7-13, 18, 19, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number 6,672,932 to Panec et al. in view of Smith et al. '281.



Regarding claims 1-4 and 9-13, Panec et al. '932 discloses a device (above) that inherently functions as a wrist rest comprising a soft body (column 4, line 39, "furry")

Art Unit: 3632

having an inner cavity (entire inside of covering 41) and a three dimensional outer covering (41), the inner cavity containing a moldable shape-retaining cushion (gel, column 3, line 36, with reference to Merriam Webster's Collegiate Dictionary - 10th Edition, "moldable" means "to give shape to", so clearly, a shape can be given to gel, and for instance, when a user presses and holds the gel area, a shape is retained), wherein the three dimensional outer covering has the appearance of a novelty character/bear/animal, wherein the three dimensional outer covering is formed from a stretchable/soft/plush/fabric-like material for contact with a user's wrist ("furry fabric", column 4, line 39, "stretchable" column 5, line 63), wherein the three dimensional outer covering is stuffed with a filling material (column 4, lines 46-48),

wherein (with respect to claim 9) the body has a longitudinally extending central portion shaped as the torso of the character and is formed with a moldable shape retaining cushion with an internal gel cell covered with fabric-like material (as mentioned above), wherein the device includes first and second peripheral portions (head and limbs, above) shaped as the extremities of the character, wherein the character is inherently usable as a cartoon character.

However, Panec et al. '932 fails to specifically teach the inner cavity to include a lower layer of weighted materials. Smith et al. '281 discloses a device/character (figures 1,2) including a lower layer of weighted materials (32). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Panec et al. '932 so as to include a lower layer of weighted materials as in Smith et al. '281 so as to allow the legs/appendages of the character of Panec et al.

Art Unit: 3632

'932 to more readily dangle downwardly as in Smith et al. '281 (since Smith et al. '281 teaches the lower layer of weighted material to be added to the feet of the character) which would increase the enjoyment gained by an operator of the device, in addition to providing for a more stable device.

Further, regarding claims 21 and 22, clearly an ordinary artisan would recognize that the lower layer of weighted materials would allow the rest to be positioned in a supine position.

Moreover, regarding claims 7, 8, 18 and 19, Panec et al. '932 in view of Smith et al. '281 further fail to specifically teach the device to have a length of approximately 7 to 10 inches or a width of 2-5 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the length and width of the device of any number of various dimensions, including approximately 7 to 10 inches or 2-5 inches, respectively, because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such dimensions are critical to the invention or produce any unexpected result (although the applicant mentioned that certain specific dimensions in the range claimed above provide "adequate support", it is never discussed exactly how they provide "adequate support"). See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Response to Arguments

Applicant's arguments filed August 18, 2004 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-4, 7-13, 18, 19, 21 and 22 have been considered but are moot in view of the new ground(s) of rejection. However, the Examiner will attempt to address all remaining arguments.

On the bottom of page 9 of the remarks, the applicant contends that the gel of Panec et al. '932 is "not necessarily... shape-retaining." The Examiner disagrees. As previously discussed, when a user presses and holds the gel area, a shape is retained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

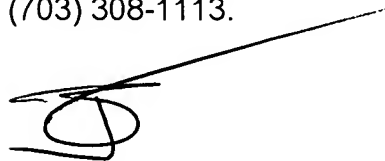
Art Unit: 3632

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
October 13, 2004



ANITA KING
PRIMARY EXAMINER